



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 5, 1996

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR96-0292

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35665.

The Texas Alcoholic Beverage Commission ("TABC") received a request for the following information regarding a certain night club:

- (1) History on any and all TABC violations, as well as the end result of those violations, and any and all police related calls involving [this night club]; and
- (2) Any and all information as to ownership as well as addresses along with other pertinent information [TABC] can send [the requestor].

You seek to withhold, under section 552.101 of the Government Code in conjunction with the common-law right to privacy, the police reports and witness and victim statements regarding two charges of sexual assault that allegedly occurred on a particular date at the night club.

We note at the outset that, with regard to item number two of the requested information, you have refused to release any ownership information to the requestor, concluding, without seeking an opinion from this office, that the information is confidential pursuant to section 552.101 of the Government Code in conjunction with section 5.48 of the Texas Alcoholic Beverage Code. Your reliance upon your own interpretation of the law is misplaced. The "name [of a permittee or licensee], proposed

location, and type of permit or license sought in an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee" is expressly excluded as confidential "private records," *see* section 5.48, and, moreover, has been expressly held to be public information. *See* Open Records Decision No. 186 (1978) at 2. You must release this information to the requestor immediately.¹

We now turn to the information for which you seek a ruling from this office. Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth calendar day after the date of receiving the written request. TABC received the written request for information on August 23, 1995. You did not request a decision from this office until September 5, 1995, more than ten days after the requestor's written request. Therefore, we conclude that TABC failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2.

We conclude that compelling reasons do exist for withholding portions of the requested information under section 552.101 which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information is excepted from required public disclosure by a common-law right of privacy under section 552.101 if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), this office stated:

In our opinion, common law privacy permits the withholding of the name of every victim of a serious sexual offense. *See* Open Records Decision No. 205 (1978). The mere fact that a person has been the

¹In this regard, we note that you have also "blackened out" the name of the President and Stockholder of the nightclub on the Offense Report, dated 4-25-96, which you have previously released to the requestor. This Offense Report should be resubmitted to the requestor without redacting this person's name. *See also* section 5.47, Alcoholic Beverage Code (Records of violations open to the public).

object of rape does, we believe, reveal "highly intimate or embarrassing facts" about the victim, and, in our view, disclosure of this fact would be "highly objectionable to a person of ordinary sensibilities." Although there is certainly a strong public interest in knowing that a crime has been committed, we do not believe that such interest requires the disclosure of the names of victims. Furthermore, certain other information, such as the location of the crime, might furnish a basis for identification of the victim.

We conclude that that the information contained in the police reports and witness and victim statements which either identifies or tends to identify the alleged victims of sexual assault must be withheld under the common law right of privacy and section 552.101 of the Government Code. We have marked a representative sample of the type of information contained in these documents which may be withheld. The remainder of the these documents must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/ch

Ref.: ID# 35665

Enclosures: Marked documents

cc: Mr. Skip Hansen
Kugle, Byrne & Alworth
Commerce Plaza Bldg.
111 Soledad, Suite 700
San Antonio, Texas 78205
(w/o enclosures)